

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 06, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

AMADOR SANCHEZ MENDOZA,

Movant,

-vs-

UNITED STATES OF AMERICA,

Respondent.

Nos. 2:11-CR-0181-WFN-14  
2:22-CV-0030-WFN

ORDER DENYING § 2255 MOTION

Before the Court is Movant's 28 U.S.C. § 2255 Motion to Vacate, Set Aside or Correct Sentence. ECF No. 1063. Mr. Mendoza challenges the validity of his sentence. He argues that because the Court based the sentencing determination in part on convictions recently invalidated by the Washington State Supreme Court in *State v. Blake*, 197 Wash. 2d 170, 195, 481 P.3d 521, 534 (2021) ("Accordingly, RCW 69.50.4013(1)—the portion of the simple drug possession statute creating this crime—violates the due process clauses of the state and federal constitutions and is void."), *United States v. Tucker*, mandates resentencing. 404 U.S. 443 (1972)

To gain relief, Mr. Mendoza must establish that (1) he is in custody under a sentence of this federal court; (2) his request for relief was timely; and (3) the court lacked either personal or subject matter jurisdiction, the conviction or sentence is unconstitutional, the conviction or sentence violates federal law, or the sentence or judgment is otherwise open to collateral attack. 28 U.S.C. § 2255. On May 23, 2013, the Court imposed a sentence of 180 months, the high end of the parties' Rule 11(c)(1)(C) agreement range. Mr. Mendoza remains incarcerated. The Government does not challenge the timeliness; therefore, the Court accepts the filing as timely.

1 Mr. Mendoza argues that the Supreme Court's decision in *United States v. Tucker*,  
2 necessitates resentencing in this case because *Blake* invalidated three of Mr. Mendoza's  
3 convictions discussed on the record during sentencing.<sup>1</sup> In *Tucker* the Supreme Court  
4 remanded for resentencing where a court, pre-United States Sentencing Guidelines,  
5 relied on convictions found to be unconstitutional due to *Gideon v. Wainwright*, 372 U.S.  
6 335 (1963). "A successful challenge to a presumptively valid sentence based on *Tucker*  
7 thus requires three elements: (1) a prior conviction rendered invalid by *Gideon*; (2) the  
8 sentencing judge's mistaken belief that the prior conviction was valid; and  
9 (3) enhancement of the defendant's sentence because of it." *Farrow v. United States*, 580  
10 F.2d 1339, 1345 (9th Cir. 1978). Not every invalidated prior conviction requires  
11 resentencing pursuant to *Tucker*. See *Custis v. United States*, 511 U.S. 485, 496, 114 S. Ct.  
12 1732, 1738, 128 L. Ed. 2d 517 (1994) ("Custis invites us to extend the right to attack  
13 collaterally prior convictions used for sentence enhancement beyond the right to have  
14 appointed counsel established in *Gideon*. We decline to do so."). Mr. Mendoza does not  
15 allege that *Gideon* invalidated his prior conviction so he cannot satisfy even the first  
16 element of the elements justifying resentencing.

17 Assuming *in arguendo* that *Tucker* applies to all prior convictions rendered  
18 unconstitutional after sentencing, Mr. Mendoza fails to satisfy the remaining elements.  
19 Though the Court acknowledges that at the time of sentencing the Court treated the simple  
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22 <sup>1</sup> Mr. Mendoza states that "six points and five convictions are based on  
23 Washington's unconstitutional drug-possession statute" but fails to specify the applicable  
24 convictions. ECF No. 1063, 2. Upon review of the Presentence Report, the convictions  
25 found at paragraphs 102, 111, and 118 each allege simple possession and each accrued 2  
26 criminal history points. Though the Court did not cite to the paragraph numbers during the  
27 sentencing hearing, the transcript reflects that the Court mentioned two simple possession  
28 conviction.

1 possession convictions as valid,<sup>2</sup> Mr. Mendoza's sentence was not enhanced as a result of  
2 the Court's presumption of validity. As the Government relates in greater detail, the Court  
3 found that Mr. Mendoza qualified as a career offender based on five separate  
4 convictions—none of which were for simple possession. The U.S.S.G. only requires two  
5 prior convictions to qualify as a career offender. U.S.S.G. § B1.1(a). The Court's  
6 calculated guideline range did not rely on the simple possession cases because the  
7 career offender finding determined his criminal history score and the guidelines relied  
8 exclusively on the drug quantity coupled with the career offender enhancement. Though  
9 Mr. Mendoza accurately notes that the Court referenced two of the simple possession  
10 convictions during the sentencing hearing, the Court addressed those convictions only to  
11 express to Mr. Mendoza that the Court would *not* be applying a § 851 enhancement and  
12 explaining to Mr. Mendoza that such a ruling benefited him. The Court ultimately  
13 accepted the parties' Rule 11(c)(1)(C) agreed range and imposed a sentence at the high end  
14 of the agreed range. The sentence represented a significant downward variance from the  
15 guideline range suggesting that Mr. Mendoza's sentence was not enhanced for any  
16 purpose, including consideration of the simple possession convictions. Mr. Mendoza  
17 argues that the sentence at the high end of the parties' agreed range implies that the Court  
18 may have been influenced by the three invalidated convictions. However, the record makes  
19 clear that the Court's decision regarding the length of sentence rested on Mr. Mendoza's  
20 conduct, the danger he presented to society, the serious crimes in his criminal history  
21 discussed on the record such as eluding, likelihood of recidivism, and to protect the safety  
22 of the community. The Court did not enhance Mr. Mendoza's sentence based on the simple  
23 possession convictions, nor did the Court rely on those convictions to determine the proper  
24 sentence within the parties' agreed range.

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27 <sup>2</sup> In fact, the convictions were legally valid at the time of sentencing as *Blake* was  
28 decided several years later.

1           Consequently, Mr. Mendoza fails to meet the elements of *Tucker* that would require  
2           resentencing. Unlike in *Tucker*, Mr. Mendoza's invalidated convictions represent a drop in  
3           the bucket of an otherwise lengthy and serious criminal history. Though the Court  
4           acknowledges that the simple possession convictions would have altered Mr. Mendoza's  
5           raw criminal history point total, the ultimate determination of criminal history category  
6           remained unaffected due to the career offender finding. Even at the time of sentencing, the  
7           Court expressed the most concern regarding the eluding and distribution related charges,  
8           mentioning two of the three possession convictions as a list rather than the detail the Court  
9           went into addressing the distribution related convictions.

10          The Court notes that the Supreme Court decided *Tucker* prior to adoption of the  
11         U.S.S.G., and case law at the time suggested that district court determinations of sentence  
12         length were presumptively valid. *Tucker* carved out an exception to this presumption  
13         where a court relied on misinformation of a constitutional magnitude. Invalidation of the  
14         prior convictions in this case did not lead to misinformation of a constitutional magnitude.  
15         Courts exercise wide latitude in sentencing discretion. The ultimate sentence fell well  
16         below the guideline range and within the parties' Rule 11(c)(1)(C) range. The prior simple  
17         possession convictions had no bearing on the ultimate sentencing range, and yet the Court  
18         still deviated from the range, sentencing Mr. Mendoza to over four years less than the low  
19         end of the applicable guideline range. Since Mr. Mendoza has not established that his  
20         sentence was illegal or unconstitutional, nor subject to collateral attack, his motion is  
21         denied.

#### 22                                 **CERTIFICATE OF APPEALABILITY**

23          An appeal of this Order may not be taken unless this Court or a circuit justice  
24         issues a certificate of appealability finding that "the applicant has made a substantial  
25         showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (West 2013).  
26         This requires a showing that "reasonable jurists would find the district Court's assessment  
27         of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473,  
28         484 (2000). Based on the Court's preceding analysis, the Court concludes that jurists of

1 reason may differ with the Court's conclusion. Thus, a certificate of appealability should  
2 issue.

3 The Court has reviewed the file and Movant's Motion and is fully informed.  
4 Accordingly,

5 **IT IS ORDERED** that Movant's Motion to Vacate, Set Aside or Correct Sentence  
6 by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255, filed February 23, 2022,  
7 **ECF No. 1063**, is **DENIED**.

8 The District Court Executive is directed to:

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- 10 • File this Order,
  - 11 • Provide copies to counsel,
  - 12 • Inform the Ninth Circuit Court of Appeals that if the Movant files a Notice of  
13 Appeal that a certificate of appealability is **GRANTED; AND**
  - 14 • Enter judgment in favor of the Respondent in 2:22-CV-0030-WFN and  
**CLOSE** the civil file.

15 **DATED** this 6th day of May, 2022.

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WM. FREMMING NIELSEN  
19 SENIOR UNITED STATES DISTRICT JUDGE  
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04-28-22